Docket Management System
U.S. Dept of Transportation
Room PL-401,
499 Seventh Street SW
Washington D.C. 20590-0001

Dear Sir/Madam:

Re: Docket Number FRA 2001-11068, Notice Number 1, 49 CFR Part 219, RIN 2130-AB39, Control of Alcohol and Drug Use: Proposed Application of Random Testing and Other Requirements to Employees of a Foreign Railroad Who are Based Outside the United States and Perform Train or Dispatching Service in the United States; Request for Comments on Even Broader Application of Rules and on Implementation Issues

FRA has requested additional information from Canadian Pacific Railway in order to supplement the record. The eight questions posed are as follows,

- Summaries of current cases challenging alcohol and drug testing in Canada.
- Data on hazardous materials volume on CP freight lines in US territory.
- Data on criminal prosecution of Canadian railroaders for substance abuse.
- Description of how CP enforces its zero tolerance policy.
- Data on number of CP safety-sensitive employees who use employee assistance programs.
- Memo on legal impediments to random testing if it occurred only in the US.
- Data on CP accidents in US territory for the last five years, and the results of any post-accident, reasonable suspicion, or reasonable cause testing.
- Details on whether CP intends to implement post-accident testing.

SUMMARIES OF CURRENT CASES CHALLENGING ALCOHOL AND DRUG TESTING IN CANADA.

Web links to the full text decisions in Entrop v. Imperial Oil and British Columbia (Public Service Employee Relations Comm.) v. BCGEU (Meiorin) were provided to FRA counsel on Feb 19/02. These two cases define the current state of Canadian law on the subject.

Appendix 1 sets out two case comments from the Human Rights Digest reporting service dated January 2000 and August/September 2000. The case comments review the Entrop decision and

the Supreme Court's decision in British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights). This latter case is an additional decision in the human rights field that describes what must be established in order for a policy (such as drug and alcohol testing) to be considered a bona fide occupational requirement (BFOR).

DATA ON HAZARDOUS MATERIALS VOLUME ON CP FREIGHT LINES IN US TERRITORY.

Seven gateways accommodate the movement of dangerous goods from Canada to the United States. The following table shows CPR's annual number of loads moving into the United States for the year 2001. The three most frequent commodity groups within the total loads are also provided for your information.

Gateway	*Annual # of Loads*	*Commodity 1*	*Commodity 2*	*Commodity 3*
Buffalo, NY	1204	LPG/Propane	Acid	Methyl Chloride
Rouses Point, NY	2459	Sodium Chloride	LPG/Propane	Sulfur
Detroit, MI	6333	LPG/Propane	Mixed containers	Acid
Noyes, MN	2469	Asphalt	LPG/Propane	Sodium Chloride
Portal, ND	28831	Molten Sulfur	Ammonia	LPG/Propane
Coutts, MT	7877	Fuel Oil	LPG/Propane	Ammonia
Kingsgate, ID	7564	LPG/Propane	Methanol	Ammonia
Total	56737	Sulfur	LPG/Propane	Ammonia

DATA ON CRIMINAL PROSECUTION OF CANADIAN RAILROADERS FOR SUBSTANCE ABUSE.

Broad industry data of the type requested is not available to CPR. The data is maintained by various individual law enforcement agencies of the Canadian government and/or Statistics Canada.

The table below identifies criminal charges laid or criminal investigations conducted by Canadian Pacific Railway Police Services in Canada pursuant to their powers as Police Officers. The charges/investigations cover the "impaired" or "over .08" sections of the Criminal Code and apply to railway rolling stock or maintenance of way equipment. The data does not apply to motor vehicles operating on roads and highways. Impaired can be either impairment by alcohol or a drug and the "over .08" applies to alcohol only.

Jan 1998 to Feb 17th, 2002.		
Description of offence	**Count Charged**	
Impaired op rail vehicle - over .08	8	4
Impaired op railway vehicle	5	1
Total	13	5
Results:		
Charged by CPR Police Services	3	
Charged by other Police Departments	2	
Arrest no charge - blew under .08	1	
Closed no further police action needed	4	
Cleared otherwise	2	
Unfounded	1	
Total	13	

DESCRIPTION OF HOW CP ENFORCES ITS ZERO TOLERANCE POLICY

In the context of a Rule "G" prohibition CPR's zero tolerance policy would be applied in the following fashion.

Rule "G" of the Canadian Rail Operating Rules prohibits the possession or use of intoxicants, narcotics or mood altering drugs (both prescription and non prescription) by employees subject to duty. When an employee is suspected of violating Rule "G" they are immediately removed

from service and a formal investigation is conducted. If the evidence supports a violation of Rule "G" the employee is terminated from service. There are occasions where an employee who is terminated will seek reinstatement based on entrance and participation in a recognized substance abuse program. Reinstatement on this basis involves conditions such as positive assessments by a substance abuse professional, abstinence and participating random drug/alcohol testing over a 2 to 3 year period. The opportunity for reinstatement is based on a review of the individual circumstances that are present in the case considered or may be ordered by an arbitrator. Failure to comply with the terms of the reinstatement agreement results in automatic termination of employment.

In the period 1995 – 2001 there were 26 dismissals (BLE and UTU members) for Rule "G" violations. Out of this number 11 employees were conditionally reinstated, either by an arbitration award or negotiated settlement, 5 dismissals were sustained and 8 are still in the arbitration process. In 1995 there we approximately 4,700 running trade employees (BLE and UTU. In 2001 there were approximately 3, 900 such employees.

DATA ON NUMBER OF CP SAFETY-SENSITIVE EMPLOYEES WHO USE EMPLOYEE ASSISTANCE PROGRAMS

The following statistics reflect Canadian Counsel of Railway Operating Union (CCROU) employees who came to the EFAP with a primary presenting problem of Alcohol and/or Drugs. CCROU employees include conductors represented by the UTU and locomotive engineers represented by the BLE.

Year	# of substance abuse clients
1995	39
1996	30
1997	46
1998	38
1999	30
2000	36
2001	28

Note: In 1995 there we approximately 4,700 running trade employees (BLE and UTU). In 2001 there were approximately 3, 900 such employees.

MEMO ON LEGAL IMPEDIMENTS TO RANDOM TESTING IF IT OCCURRED ONLY IN THE US.

Our legal advisors indicate that Canadian law, including the Canadian Human Rights Act, governs the employment relationship between Canadian Pacific Railway (CPR) and its employees, including those Canadian-based crews who operate in the United States. This legislation defines disability to include any previous or existing dependence on alcohol or drugs.

Given the employment relationship is governed by Canadian law our legal advisors indicate that CPR would still risk Human Right complaints from its Canadian based employees if random testing occurred only in the U.S.

DATA ON CP ACCIDENTS IN US TERRITORY FOR THE LAST FIVE YEARS, AND THE RESULTS OF ANY POST-ACCIDENT, REASONABLE SUSPICION, OR REASONABLE CAUSE TESTING.

CPR Accidents involving Canadian Crews in the United States

INCIDENT NO	INCIDENT DATE	U.S. LOCATION	TRACK	TYPE OF TRACK	FRA	CAUSE	DESCRIPTION	FRA REPORTABLE COST
120,201	02-Sep-97	DETROIT	NS	YARD / OTHER TRACK	N	H702	RUN THROUGH SWITCH	NA
121,318	15-Apr-98	DETROIT	CSX	YARD / OTHER TRACK	N	H702	RUN THROUGH SWITCH	NA
121,391	27-Apr-98	DETROIT	CSX	SIDING	N	T199	DERAILMENT	NA
122,256	02-Dec-98	DETROIT	CSX	SIDING	N	H702	RUN THROUGH SWITCH	NA
122,299	09-Dec-98	DETROIT	CSX	SIDING	N	T314	DERAILMENT	NA
150,571	05-Feb-99	EASTPORT	UP	YARD / OTHER TRACK	N	H702	RUN THROUGH SWITCH	NA
154,427	30-Sep-99	DETROIT	NS	YARD / OTHER TRACK	N	T110	DERAILMENT	NA
154,396	02-Oct-99	DETROIT	CSX	YARD / OTHER TRACK	N	T110	DERAILMENT	NA
155,964	22-Dec-99	DETROIT	NS	YARD / OTHER TRACK	N	H306	DERAILMENT	NA
156,057	04-Jan-00	EASTPORT	UP	YARD / OTHER TRACK	N	H703	DERAILMENT	NA
158,209	28-Apr-00	DETROIT	CSX	YARD / OTHER TRACK	N	T403	DERAILMENT	NA
158,897	29-May-00	DETROIT	NS	YARD / OTHER TRACK	N	T205	DERAILMENT	NA
160,788	26-Aug-00	DETROIT	CSX	YARD / OTHER TRACK	N	H702	DERAILMENT	NA

165,373	24-Apr-01	DETROIT	CSX	YARD / OTHER TRACK	N	M599	DERAILMENT	NA
166,838	20-Jun-01	DETROIT	CSX	YARD / OTHER TRACK	N	T314	DERAILMENT	NA
168,133	08-Aug-01	DETROIT TUNNEL	CP	MAIN TRACK	Y	M505	OTHER INCIDENT	25,458
168,104	09-Sep-01	DETROIT TUNNEL	CP	MAIN TRACK	Y	T216	DERAILMENT	788,963
168,494	14-Sep-01	DETROIT	CSX	YARD / OTHER TRACK	N	H303	DERAILMENT	NA
170,704	22-Jan-02	DETROIT	CSX	YARD / OTHER TRACK	Y	T399	DERAILMENT	10,800

Note 1 - FRA costs are in Canadian Dollars
Note 2 - "NA" = less than FRA $ threshold
Note 3 - none of the accidents met FRA testing requirements therefore no tests were performed.

DETAILS ON WHETHER CP INTENDS TO IMPLEMENT POST-ACCIDENT TESTING.

In the arbitration decision Re: Canadian National Railway Co. and Canadian Auto Workers; United Transportation Union, Intervener, dated July 18, 2000 Arbitrator M.G. Picher outlined the labour relations parameters within which an employer could conduct urinalysis and breathalyzer testing on reasonable grounds. Specifically he stated, "For employees occupying risk sensitive positions, the company may conduct drug and alcohol testing in circumstances of reasonable grounds including following any significant accident or incident". CPR's proposed Drug and Alcohol policy has been modified to take into account the recent legal clarifications and provides for post accident testing for cause. FRA has previously been given CPR's proposed new Drug and Alcohol policy. We are currently considering a change to section 8 to add post accident testing requirements that would mirror FRA criterion. The proposed text is set out at appendix 3 with the changes underlined. Once a final decision has been made we will inform FRA.

We have reviewed all train accidents on CPR in Canada in 2001 and believe there were only 6 incidents which may have triggered FRA post accident testing at the time of the accident, even though final FRA reportable costs did not meet the criterion in 2 of those cases. Particulars of those incidents are set out at Appendix 2

Submitted this 14th day of March, 2002

Canadian Pacific Railway

APPENDIX 1

Random Alcohol Testing Approved

EMPLOYMENT EVALUATION AND TESTING – drug testing as a condition of employment –**BONA FIDE OCCUPATIONAL QUALIFICATION** - absence of alcoholism for refinery employee – **OCCUPATIONAL HEALTH AND SAFETY** - safety orders and regulations - **DISABILITY** - discriminatory treatment in employment on the basis of alcoholism - disabled employee's disclosure of disability - perceived disability - handicap includes alcoholism – **INTERPRETATION OF STATUTES** - definition of "handicap"

DISCRIMINATION - Meiorin test - adverse effect discrimination - direct discrimination - safety risk as reasonable cause for discrimination - definition of discrimination – **REASONABLE ACCOMMODATION** - Meiorin test for reasonable accommodation - duty to accommodate short of undue hardship

BURDEN OF PROOF - elements of a prima facie case

JURISDICTION - jurisdiction limited to original allegation – **BOARDS OF INQUIRY / TRIBUNALS** - authority to broaden scope of complaint - **COMPLAINTS** - scope of complaint – **APPEALS AND JUDICIAL REVIEW** - appeal of damage award - **DAMAGES** - damages assessed for willful or reckless discrimination – **ADMINISTRATIVE TRIBUNALS - COURTS** - standard of review of court over administrative tribunals

Imperial Oil appealed a ruling of the Ontario Divisional Court upholding a decision of the Ontario Board of Inquiry which found that Imperial Oil's drug and alcohol testing policy discriminated on the basis of handicap. The Ontario Court of Appeal allowed the appeal on some grounds and dismissed it on others.

The complaint of Martin Entrop arose after Imperial Oil instituted a comprehensive alcohol and drug-testing policy in 1991 for employees at its two Ontario refineries. The policy targeted employees in safety-sensitive positions where impaired performance could result in a catastrophic incident and where employees had no or little direct supervision. The policy required no presence in the body of illicit drugs and no blood-alcohol concentration exceeding .04 per cent while at work. It also provided for random alcohol and drug testing; automatic dismissal on a positive test or other policy violation; a certification process to remain in a safety-sensitive position, including a medical examination, negative alcohol and drug tests and a signed acknowledgment of compliance with the policy; mandatory disclosure to management of a current or past "substance abuse problem"; and reassignment to a non-safety- sensitive position on disclosure of a substance abuse problem. The policy was amended in 1992 to permit reinstatement to a safety-sensitive position on completing a company approved two-year rehabilitation process, followed by five years of abstinence, and on signing an agreement to abide by specified post-reinstatement controls.

In 1991 Martin Entrop was a senior control board operator at the Sarnia refinery. He was a recovered alcoholic. When the new policy came into effect, he disclosed that he had had an alcohol abuse problem, but had not had a drink since 1984. He was immediately reassigned to a non-safety- sensitive position. Entrop filed a human rights complaint alleging discrimination based on handicap. Imperial Oil amended its policy to permit reinstatement.

However, in order to obtain reinstatement, Entrop underwent several medical evaluations, all of which showed that he was not alcohol dependent and that he had no psychological or psychiatric problems preventing him from resuming his former job. He was required to agree to unannounced alcohol tests and to comply with the policy. He agreed and was reinstated. In 1995, he amended his complaint to allege that the company had taken reprisals against him for filing a human rights complaint.

The Board of Inquiry made five general conclusions, all of which are disputed by Imperial Oil. The Board's five conclusions were: (1) the requirement that employees disclose any current or past "substance abuse problem" contravened the Ontario Human Rights Code because the definition of "substance abuse problem" was too broad and was unlimited in duration; (2) the minimum of seven years between re- moval from a safety-sensitive position and reinstatement breached the Code because this minimum was not necessary in all cases; (3) the mandatory conditions of reinstatement breached the Code because they were not necessary in all cases; (4) pre-employment and random drug testing breached the Code because Imperial Oil failed to establish that a positive drug test showed impairment. Drug-testing "for cause" or "post-incident" might be permissible, if Imperial Oil established that this testing was necessary as one facet of a larger process of assessment of drug abuse; (5) random alcohol testing breached the Code because this testing was not reasonably necessary to deter alcohol impairment on the job. Alcohol testing might be permissible for "certification" and "post-reinstatement", but only if Imperial Oil established that this testing was necessary as one facet of a larger process of assessment of alcohol abuse.

Imperial Oil requested that the Court set aside these five general conclusions, and also to declare that the Board of Inquiry had no jurisdiction to make rulings regarding the legality of the overall policy. in addition, Imperial Oil disputed the Board of inquiry's award to Martin Entrop of $10,000 for mental anguish.

Imperial Oil argued that the Board of inquiry had no jurisdiction to inquire into all aspects of the alcohol and drug policy because Entrop's complaint dealt only with the matter of mandatory disclosure of a former alcohol problem, and the terms of reinstatement to a safety-sensitive posi- tion. Imperial Oil contended that the Board of Inquiry had no jurisdiction to make findings regarding the legality of pre-employment and random drug and alcohol testing because these issues were not within the scope of Entrop's complaint.

The Court ruled that because Martin Entrop was required to sign an undertaking to comply with the policy in order to gain reinstatement, the Board was permitted to assert jurisdiction over all aspects of the policy with respect to alcohol abuse. However, the Court found that the Board of inquiry did not have jurisdiction to address drug testing which was not at issue in Martin Entrop's circumstance. Although employees were required to comply with the overall policy, Entrop did

not allege that all provisions of the policy discriminated against him. Neither Entrop nor the Ontario Human Rights Commission asked to amend his complaint to cover the policy as a whole.

However, since both the Board of Inquiry and the Divisional Court considered whether the drug testing provisions of the policy violated the Code, the Court found that practically it had no alternative but to do so as well.

Imperial Oil contended that the provisions in the policy for pre-employment drug testing, random alcohol and drug testing for safety-sensitive positions and testing "post incident" and "for cause" were not discriminatory. The Board of Inquiry ruled that the policy constituted direct discrimination and that pursuant to s. 17 of the Code Imperial Oil was required to show that employees would be incapable of performing the requirements of the job because of their handicaps related to drug or alcohol use. Imperial Oil contended, however, that the policy was neutral on its face and consequently pursuant to s. 11 of the Code it was required to show that it could not accommodate those negatively affected by the policy without undue hardship.

However, the Board of Inquiry rendered its decisions in this case before the Supreme Court of Canada handed down its decision in British Columbia (Public Service Employee Relations Comm.) v. B.C.G.E.U. (1999), 35 C.H.R.R. D/257 ("Meiorin") which erased the distinction between direct discrimination and adverse effect discrimination. The Court of Appeal determined that the effect of the unified approach set out in Meiorin was that Imperial Oil could rely on either s. 11 or s. 17 of the Code. However, under either section the employer would have to satisfy the third step of the Meiorin test, that is, it would have to show that the policy was necessary to accomplish a work-related purpose. To show that the rule was necessary, the employer must demonstrate that it was impossible to accommodate individual employees without imposing undue hardship on the employer. Meiorin requires that the rule itself accommodate individual differences to the point of undue hardship. If it does, it is a bona fide occupational requirement. If it does not, the rule is discriminatory. The Court found that this test was, in fact, little different from the one applied by the Board of Inquiry.

Applying Meiorin, the Court determined that the pre-employment and random drug testing provisions of the policy violated the Code, but the alcohol testing provisions did not. The Court of Appeal agreed with the Board of Inquiry's finding that freedom from impairment by drugs or alcohol was a bona fide job requirement. The contentious issue was whether the means used to measure and ensure freedom from impairment were reasonably necessary to achieve a work environment free of alcohol and drugs. The evidence established that drug testing shows only past use, and therefore provides no evidence of impairment. Also the sanction for a positive test was severe and not sufficiently sensitive to individual capabilities. No individual accommodation was contemplated. For these reasons, the Court ruled that the drug testing provisions of the policy breached the Code.

However, random alcohol testing for employees in safety-sensitive positions was on a different footing, since breathalyzer tests show current impairment. The Court of Appeal rejected the Board of Inquiry's conclusion that other less drastic means existed to deter alcohol impairment on the job. It found that for safety-sensitive jobs alcohol testing was a reasonable requirement. However, to satisfy the third step of the Meiorin test Imperial Oil must accommodate the needs

of those who test positive. Dismissal in all cases is inconsistent with the duty to accommodate. Imperial Oil is required to accommodate individual differences and capabilities to the point of undue hardship. That accommodation should include consideration of sanctions less severe than dismissal and, where appropriate, the necessary support to permit an employee to undergo a treatment or rehabilitation program.

The Court, therefore, set aside the Board's conclusion that random alcohol testing for employees in safety-sensitive positions breached the Code, holding instead that the testing was a bona fide requirement provided that the sanction for an employee testing positive was tailored to the individual's circumstances.

The Court upheld the Board's ruling with respect to mandatory disclosure, reassignment and reinstatement, finding that the provisions were overly broad and were not reasonably necessary in all cases. Entrop's case provided a good example of why the provisions for mandatory disclosure and automatic reassignment were not reasonably necessary. Entrop was not incapable of performing his job because of his past alcohol abuse. The provisions for mandatory disclosure, reassignment and reinstatement breached the Code.

The Court also upheld the Board's finding that Imperial Oil discriminated against Entrop wilfully and recklessly. The reinstatement process was lengthy and demeaning. It caused Entrop stress and anxiety that was unnecessary in light of Entrop's unblemished work record and years of sobriety. Further, Imperial Oil took a number of actions which the Board ruled amounted to acts of reprisal against Entrop. The Court concluded that the evidence on Entrop's reassignment and reinstatement, and the finding of reprisals supported the award of damages for mental anguish. The Court of Appeal allowed Imperial Oil's appeal in part. The Court held that the Board of Inquiry had no jurisdiction to in- quire into the drug testing provision of the policy, although the Court found, as the Board of inquiry did, that those provisions breached the Code. The Court also set aside the Board's conclusion that random alcohol testing for employees in safety-sensitive-positions violated the Code, holding instead that such testing is a bona fide occupational requirement provided that the sanction for an employee who tests positive is tailored to the employee's individual circumstances.

Imperial Oil Ltd. v. Entrop *(July 21, 2000), C29762 (Ont. C.A.: Morden, Laskin and Goudge JJ.A.) (Eng. 30 pp., CHRR Doc. 00-141) [To be reported in 37 C.H.R.R.]*

Terry Grismer Wins

DISABILITY - services denied on the basis of visual impairment (homonymous hemianopsia) – **PUBLIC SERVICES AND FACILITIES** - driver's license denied - individual assessment as altema-

tive to setting discriminatory standard - **EVIDENCE** - sufficient evidence to establish defence – **BURDEN OF PROOF** - onus on respondent

DISCRIMINATION - Meiorin test - adverse effect discrimination - bona fide justification and cost of individual testing as reasonable cause - reliance on medical advice - safety risk - sufficient risk - definition of discrimination – **REASONABLE ACCOMMODATION** - reason- able accommodation principle - duty to accommodate where bona fide qualifica- tion exists - duty to accommodate short of undue hardship - individual testing

The Supreme Court of Canada has ruled that the B.C. Superintendent of Motor Vehicles discriminated against Terry Grismer by refusing him a driver's licence because he had homonymous hemianopia ("H. H.") which eliminated most of his left side peripheral vision in both eyes.

Terry Grismer had a stroke in 1984 at age 40. As a result of the stroke, he suffered from H.H. Persons with H.H. always have less than 120 degrees of peripheral vision and no person with H.H. is issued a driver's licence in B.C. The Motor Vehicle Branch cancelled Grismer's licence.

Grismer claimed that through the use of glasses with prisms, extra mirrors on his truck, and regular movement of his head, he could compensate for his disability and drive safely. He alleged that he was discriminated against because he was not given an individual assessment. Instead, the simple fact that he had H.H. barred him from having a driver's licence.

Applying the new unified test that was fashioned in British Columbia (Public Service Employee Relations Comm.) v. B.C.G.E.U. (1999), 35 C.H.R.R. D/257 (S.C.C.) ("Meiorin"), McLachlin J., writing for a unanimous Court, ruled that the Superintendent of Motor Vehicles was required to show that the "no H.H." standard was adopted for a purpose rationally connected to the regulation of driving; that the standard was adopted in good faith; and that the standard was reasonably necessary because the Superintendent could not accommodate persons such as Mr. Grismer without undue hardship, whether that hardship took the form of impossibility, serious risk or excessive cost.

The Superintendent's goal was to maintain reasonable highway safety. The evidence showed that the Superintendent had not set a goal of absolute safety since he licenced many people with various forms of disability. Such a goal would not be feasible in any case, since no one is a perfect driver.

The central issue was whether the "no H. H." standard was necessary to meet the goal of reasonable highway safety. There were two ways that the Superintendent could show 'that a standard like this one, that permits no accommodation, is reasonably necessary. First, he could show that no one with H. H. could ever meet the desired objective of reasonable highway safety. Alternatively, he could show that accommodation is unreasonable because testing individuals to determine whether they can drive safely despite their disabilities is impossible short of undue hardship.

The Court found that the Superintendent had not demonstrated that no person with H.H. could drive safely. in fact, there was evidence to show that some people with H.H. may be able to drive safely and that Terry Grismer may have been among them. The Superintendent also failed to show that individual assessment was impossible without incurring undue hardship. Some forms of testing were available. The Superintendent alluded to the cost associated with assessing people with H.H., but offered no precise figures. The Court responded that while in some circumstances excessive cost may justify a refusal, it is too easy to cite increased cost as a reason for refusing disabled persons equal treatment. Impressionistic evidence of increased expense will not generally suffice.

The Court concluded that the Superintendent erred in this case because he abandoned his reasonable approach to licensing and adopted an absolute standard, which was not supported by convincing evidence. The Superintendent was obliged to give Mr. Grismer the opportunity to prove whether or not he could drive safely, by assessing him individually. His failure to do so was a breach of the B.C. Human Rights Act.

British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights) *(Dec. 16, 1999) File No. 26481 (S.C.C.) (Eng. 30 pp. / Fr. 33 pp., CHRR Doc. 99-240) [To be reported in 36 C.H.R.R.]*

APPENDIX 2

A release of hazardous material lading from railroad equipment resulting in either an evacuation or a reportable injury;

Incident 163907 (type damage property) - February 2, 2001. Alberta. Five loaded tank cars derailed at 3.9 mph with one of the tanks punctured and venting the contents of anhydrous ammonia into the atmosphere. Approximately 5,000 people in the immediate area were evacuated, 37 people were injured. No personal injury reported to train crew member. FRA-reportable costs of this incident: $39,034 Cdn. Total costs: $806,422 Cdn.

Damage to railroad property of $1,000,000 US or more.

Inc No	Date	Type	SA	Description	Total Cost ($ Cdn)	FRA-Rept. Cost ($ Cdn)
163131	Jan. 8, 2001	DERL	N. Ont.	Derailment of 59 cars. Approximately 4,500 feet of track damaged. Caused by improper train handling.	2,692,320	1,266,277
164447	Mar. 3, 2001	DERL	N. Ont.	Derailment of 35 cars. Approximately 1,300 feet of CPR track and 900 feet of adjacent CN track destroyed. Caused by loss of lateral restraint of track structure.	2,115,056	2,115,056
164661	Mar. 14, 2001	DERL	BC Int.	Derailment of 3 locomotives and 10 cars. Approximately 500 feet of track damaged. Contractor switch grinder started fire at rail lubricator, which caused track buckle.	2,116,974	1,515,650
167459	Aug. 9, 2001	XING	Sask.	Derailment of 2 locomotives and 13 cars (incl. 4 DG cars, 2 leaking). Approximately 780 feet of track destroyed, along with 2 crossbucks and train scanner. Train struck gravel truck occupying crossing.	2,630,560	1,630,560

Impact Accident, greater than FRA $ threshold and a reportable injury;

Incident 164879 (rear end collision) - Mar 27, 2001, Brooks, Alberta. A rear end collision between hump assignment and train #1 westward causing derailment. The force of the collision resulted in 3 lost time injuries. FRA-reportable costs of this incident: $13,674 Cdn. Total costs: $15,372 Cdn.

APPENDIX 3

PROPOSED AMMENDMENT TO CPR POLICY

FOR CAUSE AND POST-ACCIDENT / INCIDENT SUBSTANCE TESTING

8.1 The company will request that employees occupying a safety critical or safety sensitive position submit to a 'for cause' substance test when there is reasonable cause to believe an employee is unfit to perform their duties due to adverse effects of substance use while on or subject to duty. Substance testing will also be requested in a post-accident / incident situation involving a major train or impact accident (using current U.S. Federal Railway Administrative guidelines) and fatal train incidents (those that involve a fatality to an on-duty railway employee). Such tests would be arranged as per Appendix A.